

# MINUTES **WARRICK COUNTY AREA BOARD OF ZONING APPEALS**

Regular meeting held in the Commissioners Meeting Room,  
Third Floor, Historic Courthouse,  
Boonville, Indiana  
April 23, 2012 at 6:00 P.M.

A moment of silence was held followed by the Pledge of Allegiance.

**MEMBERS PRESENT:** Larry Willis, Chairman; Don Mottley, Tina Baxter, Terry Dayvolt, Judy Writsel, Mike Winge and Jeff Valiant.

Also present were Morrie Doll, Attorney, Sherri Rector, Executive Director and Sheila Lacer, Staff.

**MEMBERS ABSENT:** None

**MINUTES:** Upon a motion by Mike Winge and seconded by Don Mottley, the minutes of the last regular meeting held March 26, 2012, were approved as circulated.

The Chairman explained the Rules of Procedure to the audience.

## **BZA-SU-12-08**

**APPLICANT:** United Minerals, Inc. by Gregory Olinger

**OWNERS:** American Land Holdings of Indiana, LLC by Bryce G. West, Auth. Rep.; Adele Wasson; Jann Allen; Karen Harris; Cheryl Wasson et al by Frank Wasson, Rep.

**PREMISES:** Property located on the S side of Stanley Rd. approximately 3200' S of the intersection formed by Stanley Rd. and Grimmwood Rd. in Greer Twp.

**NATURE OF CASE:** Applicant requests a Special Use (SU 13) from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow mineral extraction, storage and transportation in an "A" Agricultural zoning district. *Complete legal on file. Advertised in the Boonville Standard April 12, 2012.*

Rich Montgomery, United Minerals was present.

The Chairman called for a staff report.

Mrs. Rector said they have all of the return receipts from certified mail to the adjacent property owners. She said this is an application for a Special Use, SU 13 to allow mineral extraction, storage and transportation in an "A" Agriculture zoning district and the applicant has answered the questions on the proposed use statement which details the operation. She commented the subject property and the surrounding property is all zoned Agriculture. She added a portion of the property lies within the 100 year flood plain. Mrs. Rector said this property is land locked and they are proposing to transport the coal across several properties, mostly ones they own. She said per Attorney Doll they need to supply the office with signed agreements/waivers from the land owners the road will cross. She said they have submitted that and Attorney Doll is reviewing them now. She said they have filed for a road use agreement with the County Commissioners where their road will cross County roads. She added in 2009 a Special Use was granted on sixty acres in the middle of this proposed Special Use and so any approval would need to be

subject to the previous Special Use. She said she has that application with her if they want to see it but it is the regular conditions that are placed on a mine operation.

Mr. Montgomery said this is a previously Special Use area and this is just incorporating some of the fringe area.

Don Mottley asked if there are any cemeteries located within the permitted area.

Mr. Montgomery said there are not.

Don Mottley asked if there are any public roads that go through this property that will either be closed or...

Mr. Montgomery said Grimmwood Road dead ends down in there but they won't be using it and it isn't going to be affected by this operation.

Terry Dayvolt asked if all of these properties are adjacent to the already permitted operation to which Mr. Montgomery stated they are.

Terry Dayvolt then asked how much property is involved.

Mr. Montgomery said the entire area is about 135 acres and 60 of that was previously approved so this is the remainder.

Mike Winge asked about how many jobs they will be creating.

Mr. Montgomery said they will have about 15 working specifically at this location.

Terry Dayvolt asked if they have started mining on the 60 acres.

Mr. Montgomery said they have not.

Judy Writsel asked which vein they will be going for; how deep will they dig.

Mr. Montgomery said this will be "six" coal.

Attorney Doll said his recollection is the haul road went through sections 7, 19 and 23 and there were two property owners that own property other than the mine in which this haul road crosses. He said in 2009 there was a Special Use approved for this site and the haul road wasn't shown within the area of the Special Use and so in speaking with the applicants and indicated to them that for this application and to rectify the omission in the 2009 application it would be nice to have a copy of the permission to use the haul road across the areas that weren't incorporated in the original application. He asked if United Minerals Inc. and Midwest Coal Inc. are related.

Mr. Montgomery said Peabody Coal is their parent company and United Minerals and Midwest Coal are both land holding companies for Peabody Coal and they are sister entities owned by Peabody Coal.

Attorney Doll said he has looked at the documents and they are in order and should be made a part of the record. (Copies on file.)

Ascertaining there were no remonstrators present and being no further questions from the Board, the Chairman called for a motion.

Terry Dayvolt made a motion the findings of fact be made as follows from the testimony and proposed use statement:

1. The USE is deemed essential or desirable to the public convenience or welfare.
2. The USE is in harmony with the various elements or objectives of the Land Use Plan for Warrick County.
3. The USE will not be a nuisance or serious hazard to vehicles, pedestrians, or residents.
4. The USE as developed will not adversely affect the surrounding area.
5. Adequate and appropriate facilities will be provided for proper operation of the USE.
6. The specific site is appropriate for the USE.

And the Application be approved in accordance to the application and plans on file, subject to the following conditions:

1. Applicant must be in compliance with all present State and Federal applicable statutes and administrative regulations. Should such statutes or regulations be repealed or weakened in their stringency during the operation of the mining activities, the applicant shall remain bound by the provisions as they exist as of this date.
2. Subject to the Road Use Agreement deemed necessary by the County Engineer.
3. Subject to meeting all local regulations and permitting.
4. Subject to the Special Use not being altered to become any other use nor expanded than that which was approved by the Board of Zoning Appeals.
5. Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
6. Subject to all public utility easements and facilities in place.
7. Subject to the conditions set forth in the approval of BZA-SU-09-19

The motion was seconded by Mike Winge.

Mrs. Rector said the findings for this application are identical to the findings for BZA-SU-09-19.

The motion unanimously carried.

The applicant was informed the approval could be picked up later this week.

**BZA-SU-12-09**

**APPLICANT:** Liberty Mine, LLC by Alex Messamore, Land Acquisition and Permits

**OWNER:** ALCOA Fuels, Inc. by G. Royce Haws, President and Daryl & Beth Mottley

**PREMISES:** 1108 acres located on the N side of New Harmony Rd. and Weyerbacher Rd. in Campbell Twp. *Complete legal on file*

**NATURE OF CASE:** Applicant requests a Special Use (SU 13) from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow mineral extraction, storage, and processing in an A” Agriculture, “M-2” General Industrial, and “CON” Recreation and Conservancy zoning districts. *Advertised in the Boonville Standard April 12, 2012.*

Alex Messamore was present.

The Chairman called for a staff report.

Mrs. Rector said they have submitted all of the green cards from certified mail of notice of this meeting to the adjacent land holders. She said this is a Special Use (SU 13) request to allow mineral extraction, storage and processing and/or oil/gas productions. She said the applicant has answered the questions on the proposed use statement which details the operation. She said the subject property and all surrounding property is vacant and zoned “A” Agriculture except for Alcoa’s lease to El Dorado Chemical Co. and railroad car storage to the southeast which is zoned “M-2” General Industrial. She said there is also a railroad to the south. She added there is some Zone A Flood Plain on the property. Mrs. Rector said the property has access to New Harmony Road and the County Engineer is requesting a Commercial Drive for the entrance. She said the proposed plan is to haul the coal by rail but if Liberty Mine decides to use Weyerbacher Road or New Harmony Road they must enter into a Road Use Agreement with the Commissioners. Mrs. Rector said this property has a Special Use filed in 2011 and appeared before the BZA in March, 2011. She said there was remonstrations against the petition and discussion regarding the IDEM and DNR permits not being obtained. She said the petition was withdrawn before the April, 2011 meeting. Mrs. Rector said they have submitted copies of the DNR Division of Reclamations S-366 Permit Issuance Letter, Permit and Findings Document *Conditional issuance only; prior to any operations the remainder of the first year’s bond segment must be submitted and approved.*; the MSHA Ground Control Plan Approval Letter; IDEM SSOA Approval Letter; IDEM Section 401 Water Quality Certification and the Department of the Army Permit. She said the application is in order.

Mr. Messamore said they have filed their first year’s bond with the IDNR. He clarified by saying it is the bond necessary for permit issuance.

Don Mottley asked if they have filed with the State Fire Marshall’s Office for the storage of explosives.

Mr. Messamore said they have not and the reason is that the State Fire Marshalls’ Office in the past couple of years have actually been much better at processing permits and they will come out and inspect the location and they have to have the magazines on site before they will give them the certificates. He said you have to go through the steps and once they put the magazines on site they will file the permit and before they store explosives they will come and approve the location and the magazines.

Don Mottley asked how close they plan on mining to Crossroads Cemetery.

Mr. Messamore said their permit boundary is within 100 feet of Crossroads Cemetery. He said that is the closest you are allowed by law. He said obviously around the permit boundary there will be appropriate buffers and safety berms.

Don Mottley asked how close they plan on mining to Weyerbacher Road.

Mr. Messamore said it is currently permitted for surface disturbance within 100 feet of the right of way.

Don Mottley asked how far they have seen fly rock away from where they were blasting.

Mr. Messamore said by regulation fly rock has to be controlled within the working bench and you can have no off site fly rock and also you have to have fly rock controlled within the areas that you have top soil removed. He said it is a very limited area that you are allowed for fly rock and he understands the concerns but in their permit the shots are designed with a 70% burden to space and ratio to control fly rock.

Don Mottley said he is concerned about Crossroads Cemetery because that is where is grandparents are buried and the only time he gets to go there is when someone takes him and he doesn't know what time that would be; it may be at noon on a Wednesday or on a Saturday and that is one of his concerns in mining that close to a cemetery if people are going to be in there.

Mr. Messamore said there won't actually be any surface blasting that close to the cemetery. He said there is a difference between surface disturbance and on the map the area that is permitted that is closest to Crossroads Cemetery is permitted for over burden placement.

Ascertaining there were no other questions from the Board, the Chairman called for remonstrators.

Bill Musgrave, 313 E. Lincoln, Chandler, Indiana, said he would hope they give this great consideration and at the end they wouldn't allow this mine. He said he has the Minutes of the March 28, 2011 meeting and if they remember basically this area they are proposing to mine was the north field area of Squaw Creek Mine. He said it is in ALCOA's own records they brought 69 million gallons of a highly carcinogenic material; coal tar pitch and tarry waste water to the mine and they never had permit to do it. He said they also brought 7.4 million cubic feet of chromium sludge to the mine and they had a one-time permit for one lagoon of material and all the rest of it he assumes there wasn't a permit for. Mr. Musgrave said in addition to that they brought he thinks 38,000 tons of weathers pot lining which results in the high fluoride content. He said when he looks back through that last meeting's minutes he thinks they remember he told them he had a rare form of cancer and was lucky to survive that but there is 1 in 100,000 people ...there were...there was another young gentleman at 25 that recreated in this same area where they are proposing to mine that had that same cancer and died. He said there was a gentleman that worked at Squaw Creek and lived just north of the mine on Fletcher Chapel Road had the same cancer and died. He said so there are three incidents of cancer related to this same area where they are proposing to mine now.

Mr. Musgrave said at the time of the last meeting he remembers ALCOA was going to provide some information to the Board and he had discussed that it was public information and available at the library and anyone could go look at it and it was also available through the IDEM website. He said they have a virtual file cabinet where you can log into it but you have to know the site name. He said he doesn't have that exact number but he could get it to them. He said ALCOA was going to provide...there were several thousand...at the time of the last meeting it was discussed there were over 10,000 pages of documentation. He said ALCOA told them they would provide them with that disc with the over 10,000 pages of information and they could review it before they made their decision. He said it was their Attorney's opinion that they shouldn't have to go to the library the applicant should have to provide the information. He said he wonders if they did provide that information as far as the different studies and health problems and different avenues of toxic wastes that was disposed of at Squaw Creek. He asked if they ever furnished that information.

Mrs. Rector not that she was aware of; not that she recalls.

Mr. Musgrave so what they did was instead of furnishing that to them where they could look it over, they withdrew their permit. He said he guesses they were hoping everyone would forget about it. He said now they come back up here and request the same permit and they never have furnished them the information. Mr. Musgrave said he doesn't pretend to have all of the information; he would like to think that he has hopefully looked over most of the information and it is very troubling as far as what is out there. He said he knows...he can leave a copy of this...unfortunately he only has two copies...one that he can leave with the Executive Director...but what it shows, in this same area where they are going to mine originally they said there weren't any problems out there at all and whenever the EPA came out there in 1994 they went ahead and gave them all *circula* numbers which is basically the superfund program if they have heard of that. He said not just one number for the whole area, they gave them ten numbers or ten superfund areas and they went out and evaluated that the EPA and IDEM and what they came up with was no body was really effected in that area; there weren't any water wells in that area or whatever and so they went ahead and let them de-list those. He said everything is still out there somewhere they assume. He held up a paper and said this is an original EPA site assessment which shows that it was highly toxic substances that ALCOA dumped on the property and the miners covered up. He said a lot of the people here tonight worked there and they know what was dumped. He said this just the EPA site assessment and it shows that cows grazed on that area right where they are going to mine and it shows that ...there has been a lot of testimony and lot of different meetings and hearings under oath that the cows died and that not only has there been a lot of health problems but problems with animals and stuff too. Mr. Musgrave handed the papers to the Executive Director. (Copy on file.)

Mr. Musgrave said he does see their permit...there were several things, you know, ALCOA during that time period said there is no problem but if they remember the last time ALCOA said yes they had to place environmental restrictive covenants on some of that ground. He said this...in close to that same area...within a 1,000 feet of where this new permit goes they consistently said over the years there wasn't a problem and then whenever they finally came back in the State made them go ahead and test the water and stuff and they found out there was a problem. He said so they made them put in environmental restrictive covenants on some of that ground and the environmental restrictive covenants...they said last meeting that they were going to provide that to you but he doesn't know whether they did or not. He said he has a copy that actually shows where the environmental restrictive covenants are and you can lay that or photo shop it over their permit area if they would. He said he also has a map here...he wished he could get it up on the screen...this map is where ALCOA said they dumped the waste and it was dumped outside of those areas, it just was. He said he can give them that (copy on file) and then said this map here is an area that the miners, through identification, have said where the waste was dumped. He said he could give them the maps and they can see there is a huge discrepancy and it falls right in the permit area. (Copies on file)

Mr. Musgrave said something else he came across was in March 30, 2007... this was actually IDEM made ALCOA go back out and test some of those areas and what this letter...it is from Lynnette Schrowe and it basically shows there are high concentrations of chemicals either in the area they are going to mine or in close proximity to where they are going to mine and they are not very good sounding chemicals. He said there is chrysene, benzo-a-pyrene in addition to the chromium. (Copy on file.) He said when they left here last year over this same issue one thing that was going to happen was the 401 Water Quality Permit; he thinks it was supposed to be April 7, 2011. He said he put some stuff together for that and he heard they did go ahead and get that permit. He said they understand they are going to take over a mile of Squaw Creek and move it to an area where the miners know the waste was dumped – outside of those areas that ALCOA says the waste was dumped. He said he just wants to add a copy of what he turned in during that hearing. (Copy on file.) He said basically it shows some of the EPA documents; it shows the surface sites and they gave them a high import...they rated them high in importance originally. He said it

is also some letters from IDEM and then there is a map of the permit area but he is sure they have a better map of the permit area and if they overlay that with where the miners said...this particular exhibit he will give it to them...originally when they brought waste to Squaw Creek the 69 million gallons of coal tar pitch and tarry wastewater what they were supposed to do was put lime with it to neutralize it and this is a memo from ALCOA that says to Peabody that they weren't putting lime in it they thought Peabody was. He said Peabody wasn't putting lime in it they thought ALCOA was and all of this is the same area where the miners say...he didn't go through and make all of the land with the environmental covenants he simply made the first copy and here is map of the environmental restrictive covenants that they have had to place after constantly saying there wasn't a problem of pollution out there. He said here is another thing he is going to leave with them and it is file copy from ALCOA to Harry Atkinson with IDEM and ALCOA maintains that all this waste is covered up with 80 feet; forty feet, sixty feet and that is simply not true either. He said he isn't saying some of the waste isn't buried that deep but his document from IDEM is waste pile reclamation because the waste kept resurfacing and they had to clean it up as recently as 2005. (Copy on file.) Mr. Musgrave said also in that same document there is information...a joint stipulation between himself and the Department of Natural Resources and the DNR legal counsel acknowledges that they believe sub-surface water is coming in contact with the waste. He said if they remember, they talked last year what is going to happen if they dig down in...their permit is permitted for 190 feet...all of the waste sites around are going to drain down in that pit and contaminate the water. (Copy on file.)

Mr. Musgrave said when he left here last time some stuff hadn't changed, he is still President of the Chandler Fire Department and that is going on 39 years. He said he has some concerns about blocking Highway 62 with the trains and they didn't know at the time whether it was going to be 400 trucks or a train. He said they say it is going to be a train and he trusts it will be a train and that is a problem that he sees. He said they shouldn't be able to close that highway for more than...three or four minutes would be great. He said three or four minutes isn't very long if you are sitting where you are sitting or watching a football game but three or four minutes if somebody dying of a heart attack and waiting the ambulance or your house is burning down is a long time. He said they also said they were going to mine within 100 feet of Weyerbacher Road and that is one of the major north south transportation routes. He said that is part of their Fire Department coverage area and it goes all the way to Gibson County. He said if this is approved; hopefully it won't be, but if it is he would like to see it at least 300 feet away from Weyerbacher Road and also from Boonville/New Harmony Road. He said that is also in his coverage area. He said as a fire department they count on the rural water supplies because there aren't water lines out there and he thinks when they look through those documents and believe him there is more on the IDEM website, they will see there is cause for concern that the water could be contaminated.

Mr. Musgrave said another permit that ALCOA has been successful in getting is the NPDES Permit. He said that is basically any water that comes off the property they have to take a sample of and send it into the State. He said the problem is normal coal mine, no big deal, you got to worry about iron, suspended solvents, the normal stuff but this isn't a normal mine. He said this is more than a mine – it is a toxic waste dump and any water that comes off that...the State didn't make them test for constituents of concern that was in the toxic waste. He said he would like for the Board to make in addition to the State sampling, whether the Health Department does it or ALCOA has to do it or Vigo Coal Company they should test the water coming off for chromium, for benzo-a-pyrene, for polyaromatic hydro carbon, for chrysene, for all the bad chemicals that is listed. He said he doesn't think that is too much to ask. He said also if they come into contact with any of the barrels that were dumped or any of the green waste, the chromium sludge that they automatically stop mining and call the proper authorities; they call Imsha, the mine safety health, they call the local health department and they call IDEM and completely stop any kind of excavation of the site. He said he feels like he was put at risk and that is how he got his cancer and that is how two other people died and he doesn't want to see anybody else go through it – any type of cancer. He said there have been a lot of unusual cancers associated with this same area.

Mr. Musgrave said he could go through the last year but basically the concerns are the same. He said it sounds like they aren't going to have to worry about a truck wash and that was a topic that came up last time. He said he thinks that covers most of his concerns and believe it keeps him awake at night thinking about ALCOA, Vigo, anybody opening up that mine. He said he was a miner for a long time and he said if they opened up and they put him in charge of it and let him pick the people who worked there he still wouldn't want it opened. He said it just doesn't need to be opened, it is too dangerous; it is not a mine it is a toxic waste dump and it is bad for the County and it can pollute the water all the way to the Ohio River and past that. He thanked the Board for their time and said he hopes they take his comments into consideration.

Mike Winge asked if he is saying that if they hit any of this toxic waste there will be other machinery going in and out this place. He asked what is the possibility of this...how bad is this stuff if it is tracked out of there on other machinery.

Mr. Musgrave said well he can't answer that because he doesn't know their mining control plan. He said he knows a lot of the workers, including him, had a special vehicle just to drive back and forth to work, just seven miles. He said he didn't really need a special vehicle...part of the dust control system is to water the roads so as they water the roads you drive your car or truck out there every day...if you have ever been to Michigan or Wisconsin in the winter and see how the snow hangs down on the cars as it keeps freezing, well that is how the mud would get. He said he would kick that mud off his tires in the driveway and he parked in one certain place. He said he will never forget the look on his wife's face and his face when they realized there were chemicals out there and they were being spread around by the dust and the mud and they had took that dirt off that old van he drove and put in their garden and then fed the vegetables to their kids. He said he can't really answer his question but he knows it is a concern and he believes if they are allowed to mine it is going to cause that waste – if it doesn't re-surface the water will seek the lowest point and it will be contaminated.

Terry Dayvolt asked how many acres were in Squaw Creek.

Mr. Musgrave said the total acres of Squaw Creek Mine was about 8,000 acres or a little over that. He said whenever you talk about Squaw Creek Mine – New Harmony Road was the dividing line of Squaw Creek. He said one mining permit was everything south of the road; that was the S009 permit (sometimes it has more zero's) and on the north side of the road it was the S008 permit.

Terry Dayvolt said so he is saying they dumped the chromium on the north and south.

Mr. Musgrave said he doesn't want to mislead them and that was all north. He said there is a particular haul road, and maybe some of the other people here want to tell them about the dumping, but there was a haul road that went straight north from the shop and there were other haul roads that came off it and so it was kind of known as the 1-3 Y because it was their #1 haul road. He stepped away from the microphone and approached the Board and showed them a map. He said a lot of times people talk about the old mining entrance numbers and all of that so he put that on the permit so if they hear somebody else talk about it they would be half way familiar with it. He said basically it's...

Terry Dayvolt said it is all north of Boonville New Harmony Road is what he is telling them.

Mr. Musgrave said yes and then they are talking about moving the creek; digging down and actually re-locating the creek through an area where miners say it was dumped. He said when he says miners understand he doesn't want to mislead them, he didn't start to work there until 1977 and he had no idea when he was out there fishing and hunting that all of this stuff had been dumped since 1965, 66 and 67.



He said he challenged the bond release and they initially won it. He said it wasn't that the facts were right in that and it all pertains to this area...it was whether it was DNR's responsibility or IDEM's responsibility to check into that waste. He said didn't put a copy of that in his handouts but he can get them a copy of it. He said the administrative law judge had over fifty reasons why the bond shouldn't be released and one of those reasons was there was a 91 month time period where ALCOA does not have any records as far as what was dumped or where it was dumped at the mine. He said that is from the environmental law judge and he can get them that. He said it is a problem and it shouldn't be opened up.

Mike Winge asked if any of the people who worked at the mine and said things were dumped there are here tonight.

Mr. Musgrave said yes. He said it depends on when they started working.

Mr. Winge said but he is saying they actually saw stuff being dumped.

Mr. Musgrave said he wished the monitor (Think Map aerial) was lower because they could show...and it's on there they testified to it. He said the one map shows that area but he is sure they would be happy to tell them but there is no reference. He said if they have another way...

Mrs. Rector asked him which map he is referring to.

He identified the map to the Board.

Mrs. Rector told him to go to the computer so the area could be shown.

Mike Winge said when they saw this stuff being dumped did they realize what it was.

Attorney Doll asked who "they" is.

Mr. Winge said the gentleman that was actually there working and seeing the stuff being dumped. He asked if they realized if it shouldn't have been there, did they know it was being dumped or just didn't know or what.

Mr. Musgrave said as far as he knows from his personal knowledge and also what people have said, it started coming out there in 1965 when the mine started up. He said they just always covered it up. He said when he went out there in 1977 he asked what is this stuff and they said it is just stuff from ALCOA they have been bringing out here since '65 and just go ahead and push it over or whatever.

Mr. Winge said he would like to hear from one of those gentlemen because he has a question for them.

Larry Willis said they can come forward when Mr. Musgrave is done.

Leon Oxley, 1988 N.SR 61, said he worked at Squaw Creek from 1970 to 2000 and if they take the area from Bateman Road to Weyerbacher Road and north of New Harmony Road that is the area they are talking about. He said he saw personally from the time he started on a coal truck on second shift, waste truck tankers come out from ALCOA and put it there. He said he asked his foreman what is it and he was told it was just waste from ALCOA don't worry about they will take care of it. He said in good weather it was taken directly to the pit floor and put down on the pit floor with gob and dirt, little dams made and there might have been only 3 or 4 trucks dumped in that particular location but that whole area (except the North 400 Area) it's all down there; he saw that from 1970 and he has been told by reliable sources that worked out there that they brought barrels out there and they scooped up those barrels with a shovel and

discarded it. Mr. Oxley said at that time early reclamation was just a dozer going along and knocking the top off the spoils and make a top about 30 feet wide. He said they ran into the barrels out there in that and they testified to that. He said ALCOA has admitted there are twelve sites out there in that north field area. He said first they said there were six sites then they upped it to nine sites and now it is twelve sites but he has never heard them recognize the fact that there is more than that out there because they put it in the bottom of the pit when the weather was good enough to get those trucks down in the pit. He said it was dumped like that simply because the next pass with the shovel covered it up and they didn't have to get a dozer to cover it up and make extra work. He said then in late '77-'79 the push really came on, ALCOA tried to get rid of as much as they could. He said ALCOA even rented a bulldozer and brought it out there for the sole purpose of covering up the green stuff that they had de-watered. He said it was like a wet baby powder and they brought a lot of it but they didn't have the dozers or equipment to just designate for that so ALCOA rented the dozer for that purpose. Mr. Oxley said don't get him wrong, he is glad to have ALCOA in his community but they have not been straight forward with this permit and they were not straight forward with the people who worked out there. He said they were told it is just ALCOA's waste and when they got to really looking at this one day at an IDEM meeting in 2004 they started counting people and there were eight dozer operators who died of cancer before they reached their mid 70's. He said some were 40 years old and they just started talking and this came out. He said that is where their concerns all came from. He said something wasn't right that they did out there. He said they weren't straight forward with the employees of Squaw Creek; they got over twenty years of coal out of this field and they got rid of 20 years of waste and he thinks that piece of land has served them well and he thinks they have gotten all out of it they can get out of it without causing more damage. Mr. Oxley said he has a concern about this as a citizen now; they are out of ALCOA and they are going to let Liberty Mine LLC go back out there and try to get some more coal out. He said he suppose they all know what LLC stands for, it is a limited liability company and what happens when Liberty gets out there and run into this stuff. He said they will say they don't want this and declares bankruptcy and leaves; is Warrick County stuck with it to clean this up. He said this is so close to where the stuff was dumped...even a couple that ALCOA shows as sites...but all along Squaw Creek up north from New Harmony Road it was dumped all up through there in different little locations and all under all that spoil and all that spoil...when you take a spoil and a coal mine pit and you mine it all out and you put the spoil over it the water table just stays wherever it is, it doesn't...it goes from the fire clay up to where it runs out and it is that level all over. Mr. Oxley said so wherever this stuff is down there, if the water is to it and it is, it can be coming out and when they dig down and open this up they are going to be creating something that they may be pumping out in a ditch and the citizens of Warrick County may have to clean it up.

Mr. Oxley said there is an ongoing litigation on the sicknesses that people have got out there and during that there have been all kinds of depositions taken. He said ALCOA's own people back in 1974 knew they had a problem and knew they were probably breaking the law but they continued dumping for five more years. He gave the Board a copy of a deposition. (Copy on file.) He said all together there is about 20 miners here tonight and they all know it was put in places that ALCOA doesn't recognize and that is because ALCOA wasn't out there. He said ALCOA had a contractor load the trucks, haul it out there and Peabody management said put it there. He said they put it there...trucks came in and dumped it and the foreman would say go push it up go cover it up. He said they would cover a little bit of it and then in the big ones...there on an incline...we're talking about an incline that goes much longer than the square and it went down on a grade that a coal truck could pull out and when they got so of an incline they decided that there is too much rain water coming into the pit and so they would spoil on through and create a little dame down there. He said as they went over a couple more pits they would build a new haul road and start a new incline and a lot of those old inclines is where they dumped this stuff. He said it goes from seventy feet deep up to the surface and it is kind of like a triangle and it is full of that stuff and it may have six feet of cover on it and it may have twelve feet of cover on it but when you were putting the last bit of coverage on it the stuff would want to boil up and there were little holes dug to let it run off and they would cover that. He said this is a toxic dump site and he doesn't believe any of them would want to

permit a coal mine at the land fill and this is worse than that. He again said this is dangerous and said they haven't taken into consideration to have an independent company out there watching them and when they run into it they shut down and handle it the way it needs to be handled. He said it is mind boggling to put this kind of liability on the citizens of Warrick County and right now it is on ALCOA and that is where it should stay.

Don Mottley asked staff to show Weyerbacher Road on the Think Map aerial.

Darwin Hullett, 511 Short Plank Road, said he went to work at Squaw Creek Mine in April, 1970. He said he had been working for a few nights on third shift as a laborer in the tippie and he was not familiar with anything out there. He said his foreman came and got him and put him with a welder that was familiar with things and they went out to start some pumps to get the water out from in front of the shovel. He said when they started out there the foreman said there are three trucks here that need to dump their waste and they built a road down in front of the shovel so you can get the water out and they are going to follow you down and dump it. Mr. Hullett said they started the pump up and they backed up beside the water and dumped their waste and part of it ran into the water and so they pumped it out toward the area of Squaw Creek. He said he had been there about a week or two and he had no idea anything was wrong. He said later he started asking questions and asked why they didn't dump in the daylight and he was told it was safer being on the road at night because not as many people were out and they didn't want it on the roads when the school buses were out. He said a driver told him they weren't allowed to be out when the school buses were out and they could start about 9 or 10 at night but they have to be in by 6 or seven in the morning. Mr. Hullett said the dozer that Mr. Oxley talked about was not permitted to go to the shop and be worked on; if a mechanic had to work on it then it was done out in the field because they didn't want the stuff that was on the dozer in the shop. He said he was never instructed by any Peabody employee on how dangerous this was and he honestly didn't think they realized it. He said he really doesn't think ALCOA realized what they had at that time in 1965-66 but as the years progressed and they understand things and new technology comes along everything, ALCOA and the government and the people learned what they had. He said it got to the place they couldn't take it out there anymore, it is illegal. He said he feels this is a toxic waste dump that needs to have a big fence put around it and needs to be patrolled and keep people out of it.

Mr. Hullett said another instance was a several years before they shut down he was on the union committee and someone came up and said Aigner Construction is working in their area covering up some of the green stuff. He said he can take them out there and show them where he parked his truck when he walked over where they were covering the stuff up. He said as a union rep he made his case that was union work but the decision was by arbiters that it was okay to use Aigner Construction because that was a hazardous waste and they couldn't touch it. He said it had been alright for them to dump years before. He said he feels the whole mess should be sealed up and left alone. He said we all have grandkids coming along and he doesn't feel ALCOA did anything deliberately in what they have done but he thinks they have a toxic waste dump in Warrick County that they need to leave sealed up.

Vernon McRoberts, 1725 Autumn Drive, Boonville, Indiana, said he had 23 years in at the mine. He said he hired in October, 1974. He said he, like many other third shift dozer operators, covered a lot of the chemicals; pushed it off. He said they were building the new haul road up through the north field; haul trucks were hauling the rock and dirt up there and they were being loaded down off the pit wall and bringing it up there and they were building that haul road with that dirt. He said his boss came and got him and said he needed him to cover some stuff up. He asked why he couldn't just take the dozer he was using and go down there and he was told that ALCOA said the stuff was too toxic and they cannot use their own equipment on it. He said so he went down there without gloves or anything and had to crawl in the machine with the stuff all over it. He said luckily he is in halfway decent health but they used that equipment and only that equipment to cover that stuff up. He said somebody had to know something and

all of the years they were out there and covering this stuff up there were Black Angus cows there and they all died. He said he had a foreman tell him you can't eat any fish out of the rec lake more than once a week because there was a problem. He said they didn't tell him what the problem was. He said they had a recreation lake out there they were allowed to fish in and it was stocked but for a foreman to tell him he can't eat the fish out of that lake more than once a week...he totally agrees this place does not need to be opened back up. He said the green sludge they would just bring it out and open the valve and let it run out on the ground. Mr. McRoberts said what happened to all the cattle to cause them to die. He said he doesn't know how many head they had out there but they were there until after they quit dumping and they died off in the field that the miners drove by every day going to and from work. He said if this Board votes it in he hopes it leaks out on their property, their grandkids property, somebody will make them realize what mistake they made.

Don Mottley asked Mr. McRoberts to show staff the location of the rec lake on the Think Map aerial.

Mr. McRoberts said to tell them how soft that stuff is when it was buried a miner sitting in the back was on a drag line on day shift and they had to walk a drag line over to pull a dozer out because it was sinking. He said that is what the company wants to tear up and he feels sorry for us all.

Gary Herr 622 N. Plank Road, Boonville, Indiana, said he worked at Squaw Creek from January, 1974 until they retired him in January, 2000. He said his first memories of the waste, the blue/green chemicals they brought out to the mine from Squaw Creek was two days after he started he was running a pit tractor and a foreman came to him and told him go up the road to the 1-3Y turning east...he would like to see a map...as you turn east...there was a...around the corner they were pushing off there. He said the foreman said there were going to be some trucks up coming up there and he was supposed to stay there and push off into a lake. He then went to staff to point to the area on the aerial. He said as they went on over the years they dumped all up through here and at times they would...he then pointed to parts of the aerial and identified different areas. He said this whole area on the west side of the haul road; these entrances all went down into the pit and all the waste was dumped in all those areas there. He said the shovel was running up and down the north and south and they dumped any place there was a dry road. He said if they had one of those stainless steel tanker trucks they would take a grader and make a road someplace dry in order for them to dump. He said they would go down the entrances 1-7 or go up to the northeast and dump and this went on for years and the reason he knows this is he was there for 26 years and he had 25-26 different jobs and he got to go around to different mine site places. He said everyday he might have a different job and there is an un-godly amount of this waste dumped out there; it is unbelievable and in places they didn't designate. He said they have designated 12 places and there are probably hundreds of areas where it was dumped. He said he was one of the first people who had to load up the cattle that were dying in about 1976 or 1977. Mr. Herr said he was instructed by his foreman to take a backhoe and bury some dead cattle down by Bateman Road near where the powder magazine was on the left hand side. He said they fed the cattle right behind the powder magazine and that is where his foreman said to go scoop up the dead cows and bury them back there. He said he tried to dig holes but there was so much rock he couldn't dig holes to bury them and so after he got one buried the foreman called a two ton truck down and he loaded all the dead cattle onto the flatbed truck and they took them to where the spoil tractor was pushing and have the tractor cover them up. Mr. Herr said he was probably in contact with twelve dead cows and he wasn't the only guy associated with this, after a period of time so many of the cattle were dying you could see the carcasses laying in the old spoils and they finally came in during third shift...apparently ALCOA hired somebody because they were the ones who had the cattle, they hauled them all off. He said he didn't know how many cows there were, maybe 60-100 head. He said he doesn't know what they did with them.

Mr. Herr said if they notice where he showed them where he was pushing off was where they (ALCOA) had their dump sites marked and it is right next to the water. He said when you push in on the north side

of that area the blue/green or whatever they dumped would go into the water and when it rained the water would run into the foreman's lake then it would run into Squaw Creek and Squaw Creek would run into the water fill lake. He said that was down by the PM building and so everything goes south so if it has been running for all these years and they expose whatever they supposedly sealed off then it is going to be havoc. He said he hates to see the kids be exposed to it. He said their families have all been exposed to it and there are at least 26 people here tonight and he bets at least 20 of them have cancer. He said he has melanoma carcinoma himself and it is a sad situation.

Ascertaining there were no other remonstrators, the Chairman called for rebuttal.

Jim Beck, Communications and Public Affairs Manager, ALCOA Warrick Operations, said he wanted to make a few comments to the Board. He said as Mr. Musgrave noted they were here a year ago and at that time there was a lot of questions raised by Mr. Musgrave and there were questions by this Board. He said many of those questions were of a very technical nature. He said right now there is pending litigation that Mr. Musgrave is involved in against ALCOA and a lot of the facts and things that he is suggesting today are being decided in a court of law. He said today they are considering is a zoning request for a mine. He said what they have provided to them and what their applicant, Liberty Mine, LLC, has provided...they did not bring this to them until they had extensive permits from both the Indiana Department of Environmental Management, the U.S. Army Corps of Engineers and the Department of Natural Resources. He said as they might imagine in today's environment it is not easy to get a new coal mine permitted. Mr. Beck said there is an extensive review process and that has been completed. He said what they ask is they not necessarily try to litigate Mr. Musgrave's case, that is being decided right now in a Vanderburgh County courtroom. He said he certainly understands that Mr. Musgrave's illness has been an emotional process for him during his recovery but the scientific evidence they have in this case does not suggest a link between his illness and activities at the former Squaw Creek Mine. He said a lot of the discussion today about where items were disposed of – they have done extensive research and they have worked very extensively with the Indiana Department of Environmental Management and they have identified those sites and have made no further action. Mr. Beck said in fact, they have also over time worked very closely because of these concerns, in fact they went out and responded earlier to concerns from miners and tested other areas they suggested and waste was not found outside the areas that ALCOA had already identified.

Mr. Beck said just again, today he wants to identify they have ALCOA leadership here today, Joe Coon, Manager of the Warrick Power Company and Royce Hawes, Manager of Primary Metals Division. He said obviously it is an important project for ALCOA and this community and they have talked before when they have had other mine permits about the economic impact that the plant brings but most importantly, they would not be proposing something that brings an economic impact if they were not assured that it was in keeping with their environmental health and safety values. He said today they have brought them a proposal through Liberty Mine LLC that has all the permits, all the technical review that has been done by those agencies that have done extensive review of the application.

Mike Winge asked if ALCOA is not concerned about that why they would not be mining this – because of the financial responsibility that could develop from this lets say. He said an interesting point was brought up earlier because a gentleman said an LLC is limited liability and he understands that so why would ALCOA have another smaller mine handle this if they are not afraid of any of these problems or whatever.

Mr. Beck said unfortunately he is not an attorney, he is a spokesman for the plant and so he cannot attest to the decision to make an LLC and he is really not prepared to be able to describe the legal decisions that went into the formation of Liberty Mine LLC.

Don Mottley asked Attorney Doll on the environmental restrictive covenant they say they have on part of this property, would he say that was a document this Board should have seen so they could determine whether or not that is a concern.

Attorney Doll said he could request as a Board member any document he thinks is relevant to the application that gives him the ability to measure those specific criteria and only those specific criteria which this Board has jurisdiction to consider. He said they are not a scientific community, they are not charged with the duty to evaluate environmental hazards or dangers, they are a Board of Zoning Appeals that has a specific section. He said he doesn't know if they all have their ordinance with them or not but their limited powers deal with approval or denial or modification of a request for a Special Use and those are a set of, frankly, six criteria they have heard a million times; every time a motion is made to approve or deny one but he thinks it is important for them to hear it again. He said they are on page 32 of the ordinance under Section 5 of Article V of the Comprehensive Zoning Ordinance. He said it says after the hearing, which does not necessarily mean they have to do it tonight, if there has been material submitted they need to hear or see or look at, or if there is material they are requesting that has not been submitted but the applicant is willing to submit as part of their application and they want time to consider that then the motion can be made to consider this or hold this over until the next meeting before any final deliberation is made but the ordinance says *After the hearing, the Board of Zoning Appeals shall make its determination for approval, denial, or modification of the special use classification based on the following criteria: 1. Whether the specific site is appropriate location for the uses; 2. Whether the use as developed will adversely affect the surrounding area; 3. Whether there will be nuisance or serious hazard to vehicles, pedestrians, or residents; 4. Whether adequate and appropriate facilities will be provided for proper operation of the uses; 5. Whether the use is in harmony with the Warrick County Comprehensive Plan and; 6. Whether the use is essential or desirable to the public convenience and welfare.* He said those are very general definitions but that is their criteria and frankly he would advise them that they can't speculate about these issues, they can't be arbitrary or capricious one way or the other, either for it or against it; they have to base it upon the record that is made tonight, the application that has been submitted and any documentation presented by remonstrators or applicants that they find to be relevant. He said if they haven't had a chance to read these documents and they want to do that he by all means advise them to do so; either way they decide this issue it is obviously important to the applicant and ALCOA and it is obviously important to the citizens who have appeared. He said he thinks they have a duty to review the material to the best of their ability before they make a decision on what they should do.

Mike Winge asked if any one, two, three or all six could be....

Attorney Doll said it is not an all or nothing approach. He said they could find the application should be denied because of its failure to meet one of the six criteria or they could find it should be approved because it effect doesn't fail to meet one of the six criteria. He said those are the only six criteria they can in fact consider in their deliberation.

Mike Winge said probably one of the most important on there is health and safety.

Attorney Doll said each of them make their own decision on what they find to be the most important among the six; he cannot do that, he serves them but he doesn't decide that issue.

Alex Messamore said he would like to speak to Mr. Motley's point; the area that is proposed to be mined under this application and is proposed for the zoning change in this permit application does not include the area that was designated for environmental restrictive covenants. He said their permit...they are not mining... they are within...its approximately 1200 feet from the permit boundary and over 2,000 feet from any surface excavation. He said from their permit they are proposing to mine and the environmental restrictive covenants there is not an overlap.

Don Mottley said tonight is the first time he has seen this document because unfortunately his computer right now can't copy or print anything off the internet or email and so tonight was the first time he saw the permit. He said he wants this on the record that he does set on CAB the Community Advisory Board at ALCOA and he also has friends in the audience so whatever decision he makes somebody is going to look at it as being the wrong decision and that is why he wants to be able to review everything and be able to make a honest...or he might after he looks at the documents he may abstain from voting. He said he wants that on the record. He said he doesn't know how many people got to read through this but he thinks there is probably 40 pages or more and he knows the Corps talks about a declaration of restrictive covenants also and what does that apply to.

Mr. Messamore said that is a completely different document; the Corps of Engineers speaks to an environmental restrictive covenant on the restore of wetlands, in other words that they should remain wetlands in perpetuity.

Don Mottley said he saw that in then he thought wait a minute, he thought Mr. Musgrave said it was an environmental covenant and then he read this so just glancing at these documents you can see where he is seeing things that...are they the same thing. He said he personally would like to see this brought back next month to give everybody a chance to review the documents.

Mr. Beck said there is a lot of confusion about sites and there was a lot of discussion about where materials were placed and as he said, there have been identified sites; IDEM has closed that investigation after looking at other sites. He said the sites that have been identified, as Mr. Messamore said, are outside the boundary of the proposed Liberty Mine.

Mike Winge said he wants to add to that. He said he is going to share a little something like Don, his personal feeling on this whole thing is not about the jobs or the money at this point it is about safety for the public and they say they have twelve sites identified but from what he has heard here tonight there are far more than that. He said these are guys, he is not about people sitting in an office, he is talking about people who actually did the work and is in this audience and has come up here and have convinced him, personally, that there has been dumping going on many, many places in there and so he is a little bit nervous, because he does have grandchildren, about opening up things like that and a possibility cause...he is right it runs south and so if there is a problem up there it is coming this way. He said he gets a little bit nervous about...because of one company the size or whatever, he doesn't think he can ever remember being anti-job or pro-growth on anything, he tries to be as positive as he can about that but when it comes to safety in the community he draws the line there. He said he is really wrestling with this situation of twelve identified; in his mind they are telling him there could be more that are not identified and that is what these gentlemen are telling him tonight. He said he has a real issue with that.

Mr. Beck said as he said, they would not be pursuing a project if it was not in keeping with their number one concern which is environmental safety. He said that is why they worked so closely with the Indiana Department of Environmental Management which did extensive review out at the former Squaw Creek Mine to both identify and characterize these sites and he believes in their packets they have information about that study. He said so the other agencies as well are examining those same issues that they are expressing concern about.

Mike Winge again said he has a real problem with...now that they are worried about those kind of problems and the gentleman that was testifying a while ago...he thinks they knew about this all along because those things...you don't get people telling you can't bury, don't use this equipment, you can't take it in there; those things are troubling to him when you get into that situation. He said he is kind of really in a fix here because now all of a sudden they are getting into all of these studies but prior there are people asking questions and all the bosses ...somebody had to know about these things. He said he has

grandchildren and his number one thing on here from day one, he doesn't care about litigation or anything else, his problem is what could happen to people if this thing is disturbed. He said that is what he has an issue with.

Alex Messamore spoke to a couple of points that were raised and said this is information that has been included in their packets that Liberty Mine submitted. He directed them to page 11 of the S-366 findings document and said to preface some of the information, all of these permits that they have given them copies of that they have obtained approval for were open for public comment both verbal and written and in specific instances both with the Indiana Department of Natural Resources permit & IDEM 401 Water Quality Certification there was a public hearing that took place locally (Boonville). He said these issues have been reviewed and all of the agencies that have approved these permits have had the chance to review all of the technical data, to hear the public comment and then to reach the decision on whether or not they should give Liberty Mine LLC the permit they had applied for. He said in this specific instance, if they look page 11 of the findings document at the bottom of that page the number 5 is in response to the issue surrounding the legacy issue of the waste. He said number five says *IDEM identified twelve potential sites within the north field that might have accepted industrial waste*. He said if they will look on the next page it says *on January 22, 2010 IDEM approved the site investigation completion; this approval accepts the six locations of waste disposal, the IDEM approval of the site investigation completion is included in the S366 permit application as attachment 6B-1 IDEM letter*. He said he has brought a copy of the letter with him and he submitted it to the Board. (Copy on file.) He read from the letter...*Based on IDEM's technical review, it has been determined that the site investigation is complete and adequately defines the location of the waste disposal areas, the disposition of the waste within those areas and has determined the nature and extent of the contaminants of concern associated with those waste streams*. He said the letter further references the extensive technical documents that went into that and this letter is signed by the Senior Environmental Manager of IDEM State Clean Up Section.

Mr. Messamore said additionally, if they will continue looking at the findings document; number seven says *IDEM approved on October 13, 2011, a sentinel well monitoring plan for the Squaw Creek Mine site. This plan is to be undertaken by ALCOA to monitor ground and surface water quality and ground water hydro-geology down gradient from waste disposal areas*. He said so there is an approved monitoring plan in place by IDEM. He said he would read them a letter and leave a copy of it with the Board. (copy on file.) He said the letter says *IDEM believes the work plan is sufficient for establishing a pre-mining background water quality study and for long term monitoring during the advancement of Liberty Mine operations*. He said this letter was signed by the Senior Environmental Manager of the State Clean Up Section of the Indiana Department of Environmental Management.

Mike Winge said he is saying ...who did they put in charge of monitoring that.

Mr. Messamore said ALCOA is in charge of monitoring the sentinel well plan.

Mr. Winge said and they are the ones that put it there to begin with.

Mr. Messamore said they are the ones ...their plant location is where the waste came from initially. He then said he is not trying to read the entire set of documents to them but there are a couple of points that he thinks are important given some of the testimony. He said #8 states considerable interaction has taken place between ALCOA, Squaw Creek, IDEM and the DNR concerning the matter and finally # 9 there are no proposed activities included in the permit application for the areas known to contain waste. He said that is again from the findings document from the Indiana Department of Natural Resources permit. He said a couple of other notes he would make in regard to some of the testimony that was given tonight; the 401 water quality certification regarding the relocation of Squaw Creek, as mentioned previously, there was a public hearing here in Boonville where they took oral and written testimony regarding the proposed



plan prior to their approval of the application. He said he would say that Liberty Mine LLC will, and affiliate companies of Liberty Mine, such as Vigo Coal Operating Company have worked with County officials regarding emergency response and minimal disruptions to traffic patterns and he thinks they have been a good corporate citizen in managing road closures and any of their activities that are within 100 feet of County right of ways. He said the last thing he would mention is there have been a lot of statements made about what occurred or didn't occur in the bottom of the pit. He said they are talking about the bottom or the floor of the Number 6 coal. He said this permit as approved and as submitted does not propose to re-mine the six spoils; to excavate down to the five seam. He said within the areas that the six coal that was extracted and the spoil is – those are areas that will be used for overburden placement for sediment control and the actual excavation to the five seam will occur outside of the #6 crop line.

Tina Baxter said #9 says there are no proposed activities included in the permit application for the areas known to contain waste. She said if they run into a place that isn't known; if they run into something, who and how is handling that.

Mr. Messamore that would be constant with – if you have an operation and you were to uncover; hazardous wastes would be like uncovering human remains or something like that, if you find something like that then you are by regulation supposed to stop and notify the appropriate agency. He said that is regulation of hazard –any industry that if you find something hazardous you are required to notify the appropriate agency.

Judy Writsel asked if there is a map that exists that shows where the twelve designated areas are.

Mr. Messamore said there is.

Judy Writsel asked if they are well outside the areas they are talking about.

Mr. Messamore said the closest area that the site investigation identified waste to the Liberty Mine permit boundary is approximately 1200 feet.

Mrs. Writsel asked if it was northeast to which Mr. Messamore said that is right.

Mrs. Writsel said when IDEM did these ...sorry, ALCOA commissioned a consultant in '93, '94 and '96 to investigate these sites, who directed them to the where the sites are; did they test the areas that were not designated by ALCOA as having been the designated site. She said ALCOA said they dumped it here, here and here, did they look any place else.

Jim Beck said as he mentioned, there is a lot of technical documentation that suggests the methodology for the testing but as he did say before; there were other sites they were asked to test based on a little bit of what they saw today ...it was here or here and ALCOA went out and specifically tests the sites that some retired miners had said there was material disposed of. He said they did not find any material other than the areas that have already been identified.

Mrs. Writsel said so these haul roads the gentlemen said they buried the waste under; they went down 150 -200 feet or whatever it took to get to those areas and tested. She asked how they determined there was no waste in these areas where the gentlemen say there is.

Mr. Messamore said what he can speak to, and he is not an employee of ALCOA, he is an employee...

Attorney Doll asked who the question is directed to, ALCOA or Liberty Mine because Liberty Mine wasn't there.

Mrs. Writsel said it is ALCOA was the one who did the test.

Jim Beck said again he thinks all of the technical documentation regarding VHE and other independent environmental consultants including IDEM would shed more light on that; unfortunately he doesn't think he can necessarily detail the technical specifications about the tests except to say there were additional tests to try to identify other areas and they were not found.

Judy Writsel said based upon miner's testimony.

Mr. Beck said that information was shared with IDEM and one important thing is these tests were designed by IDEM and then their consultants would go out and do and follow the instructions that IDEM gave their consultants.

Attorney Doll asked if any of the 12 identified sites are in the locations and co-in side with the testimony that the Board has heard tonight from some of the former employees. He said some of the men came up and using Think Map aerials identified locations of where they saw this happen; so he question is do any of those sites identified by the witnesses co-inside with, overlap with or are they contained within the twelve identified specific sites their test results revealed. He said it is a credibility question.

Mr. Beck said so his question might be if there are sites identified today by the miners that overlap the proposed boundary ...

Mr. Doll said no, not the proposed boundary of the site...

Mr. Beck said if the sites they have identified coincide with the twelve sites that they referenced ALCOA has monitoring wells.

Mr. Doll said yes, that is the question.

Mr. Beck said he does not know...unless Alex knows...

Mr. Messamore said to be honest, given what the somewhat erratic looking at maps and trying to point it might be difficult to exactly pinpoint areas.

Attorney Doll said so they don't know.

Mr. Messamore said no and he doesn't have the report in front of him but he does know that from ...

Attorney Doll said part of what his Board has to do is judge the integrity of the witnesses; who they choose to believe and who to dis-believe and the purpose of his question was if in fact these gentlemen have vivid recollections of dumping at a specific places that they can identify on a map that is relevant for this Board's consideration. He said and if it happens to be the same location of the twelve sites then maybe it is no harm no foul to the application. He said frankly that would be very helpful it seems to him if they can demonstrate to this Board where these twelve sites are.

Mr. Messamore said these twelve sites are not within the permit boundary proposed.

Attorney Doll asked if he recalls him saying this Board must judge their application; and they have the burden of proof, not the miners and not the Board of whether the use will adversely affect the surrounding area. He said it seems to him the twelve sites are in that surrounding area so they would be relevant if the

Board wants to see the map. He said it's up to the Board to ask for it, not him, but he is surprised the map isn't here.

Judy Writsel said that is essentially what she was asking, is where is the map, where are the twelve sites and where are they related to this ...she would love to see a very specific map.

Mike Winge said he agrees and everything coming from the witnesses side has been very specific; they came up here to show and all they have here is a bunch of statements and they have asked simple questions and they aren't them (answers) or in his opinion they aren't getting them. He said they seem to be dancing all the way around what they are looking for; where exactly are those twelve sites on this map. He said if they took part in that they should be able to come up and point and get awful close; or is it where some of these gentlemen said they were, that is what they are looking for.

Mr. Beck said he thinks the answer to the question is ... he understands what he is saying, there is a lot of technical work that has been done and in order for them to stand here right now and pull a map and identify those sites that are outside the permitted area that they are asking for the Special Use permit; they were not prepared to do that today because that was not within the permit. He said with that being said, they certainly have those maps; they are available but in order for him to stand here or Alex to stand here at this moment and say this is where it is he thinks that would be uncomfortable for them to do because they are getting into a very technical, specific area that they are wanting answers on.

Mike Winge said his response to that is they are saying it is outside what they want permitted tonight but his understanding and he is going to ask for a simple show of hands of the gentlemen that were speaking earlier, are they saying that it inside the boundaries of what they are getting permitted tonight.

Unidentified parties said they haven't seen the map.

Attorney Doll questioned they haven't seen the map of the permitted requested area.

An identified man said not enough that he can identify.

Don Mottley said he has looked at this area several years ago and unfortunately he thought he was moving to Ohio and he cleaned house and all of his documents are gone but asked if they leased some property to the Beagle Club to run their dogs and then they were asked to leave because their property was found to possibly have some of this stuff buried on it. He said if they look at the map it is up on Bateman Road close to Greenbriar Road. He said several of the men here tonight have talked about Bateman Road and it being dumped. He said he remembers seeing one of the sites being identified on the east side of Bateman Road close to Greenbriar Road.

Larry Willis asked if that is inside this area.

Attorney Doll said no.

Don Mottley said no but what he is saying is there are people in the audience who have identified some of these sites that were shown on some of these maps in previous meetings and things.

Mike Winge said within this area.

Don Mottley said not within this area but ...

Larry Willis said inside the permitted area.

Don Mottley said no.

Mrs. Rector said it seems to her that both sides need to give more information. She said she thinks the remonstrators need to see the permitted area so they know for sure what they are looking at and...

Mike Winge asked if they can get something to where they can pick it up ....

Attorney Doll said it is public information.

Mrs. Rector said this has been filed for a month.

Attorney Doll said anyone who wants to see this can request a copy of everything they have in their possession.

Mrs. Rector said the Board needs to read all the permits and everything; not that she wants to hear all of this again but she thinks that both side need to give some more information. She said they want the map of the twelve sites and they need to see the area that is being mined.

Mike Winge said what he would like to see is both sides; in other words you (petitioner) come back and show them where the twelve sites are and the witnesses he would like for them to be able to show where they saw the stuff being dumped. He said he is curious if it is outside or of if some is inside some of this boundary. He said that is what they need to know.

Mrs. Writsel said she would like to know if the people who did the testing were directed to test in the areas where the mining is to take place.

Alex Messamore said they were and they can provide the rationale for the testing and the methodology.

Mrs. Writsel said she would like to know where they tested because this is a big area. She said they may have tested one area and then 400' to the east there could have been a dump. She said if the water runs in the wrong direction they may not have caught it.

Mrs. Rector asked Attorney Doll where does the Board go with ALCOA brings a map and there are twelve sites; the miners come up and say here are twenty more sites. She said this is in a lawsuit; where is the Board at...

Attorney Doll said they have no relevance to the lawsuit as long as what is being provided to them is being provided willingly by the applicant or willingly by the litigants; they are not a part of the lawsuit and they don't want to be part of the lawsuit and they do not measure the standards that the lawsuit deals with or even the subject matter that the lawsuit deals with. He said they have six questions; that is all they have and they are not going to be dealing with that. He said if something is provided to them by somebody that is also a participant in a lawsuit they have to understand it is public record, their comments here could be used against them – talk to your own legal counsel about that and what they provide to the Board is public and people can see it, hear it, listen to it and they can ask to hear the tapes. He said so guard themselves if they are in litigation to that extent. He said but if ALCOA provides, at the request of the Board, these twelve site so they can see if they are far enough away then they don't have any worry about it; or that they are close and they are concerned and if the remonstrators want to see a copy of the permitted area that is the subject of this Special Use application and want to take a highlighter and identify areas individually by color so the Board can consider that if they want at their next hearing.

Jim Beck said the question that was asked is what if there are other sites and discussion about where material was placed. He said that same conversation has occurred with the Indiana Department of Environmental Management; basically every time there were sites identified they (miners) said well it is here or there and they went out and tested those sites and after those tests, IDEM concluded that investigation. He said IDEM has agreed that these sites have been identified and they are now in an ongoing monitoring phase, so that is the agency that is charged with protecting safety and environmental health in the State of Indiana and they have no further action regarding these sites at the former Squaw Creek Mine.

Mrs. Writsel asked if when they were out there did they (who ever did the testing) mark where they tested on a map.

Mr. Beck said he believes it was BHE who tested.

Don Mottley asked if the wells are still there so they can be tested again.

Alex Messamore said some of them are still there.

Mrs. Writsel said they should certainly have longitude and latitude identification as to where they tested.

Mike Winge said they want to see them on a map.

Judy Writsel said she would like to know where those tests took place and see them marked.

Mike Winge said for them to make a decision... he is looking at this personally as a safety issue because he has grandchildren. He said he wants to see where they said they dumped it – that is their responsibility; and he wants to see where you say those twelve sites are.

Mrs. Writsel said the sites that were tested and found negative too.

Mr. Beck said they want to make sure that each of the Board members have all of the information they need to be able to make a decision and that is why they didn't come to them today until such time as they had the US Army Corps of Engineers, the DNR; the IDEM – all of those folks who have examined these very issues that they are addressing, but whatever they need as a Board, ALCOA and Liberty Mine, LLC will accommodate and give them the information in public record and in permits that they need.

Larry Willis said someone needs to make a motion to have the both parties bring back the information they want and continue this to a later meeting; either the next meeting or whatever they feel comfortable doing.

Judy Writsel said she thinks they are needing two maps; one map showing all the places they tested and one map showing where the miners say stuff was dumped and see if they overlap.

Mike Winge said this is going on the third time and the burden of proof belongs to them and right now he just doesn't think they are meeting it. He said they will post pone this one more time and he wants to see on those maps what Mrs. Writsel said. He said he is going to make this in form of a motion. He made a motion that when they come back he wants a map showing all twelve locations of the ones that was tested and he wants another showing of the ones they say they tested and it was negative. (It could be one map) He continued saying he wants the witnesses to come back with a map showing where all the sites they say dumping took place. He said they have to make a decision here and they can't keep postponing it.

Attorney Doll said if it is in the requested Special Use area.

Mike Winge said yes, and they are going to get a map of that area; he is sure staff can provide the map, and if there are any locations within this permitted area they say they were physically there and there was dumping going on they need to know. He said he made that in a motion and they will continue this until the next meeting.

Judy Writsel seconded the motion.

Mrs. Rector said the next meeting will be Tuesday, May 29<sup>th</sup> because that Monday is Memorial Day.

Terry Dayvolt asked Mr. Messamore if they did test drilling on this property.

Mr. Messamore said if he means field drilling for coal, they did.

Terry Dayvolt asked if they had an agronomist test the soil for acidity or...

Mr. Messamore said yes there was acid base accounting done and typical overburden holes and the strata was tested for acid base accounting.

Terry Dayvolt asked to see a copy of that as well.

The Chairman said there is a motion and second on the floor.

The motion carried unanimously.

The Chairman said to let the record show that Mr. Mottley had to leave the meeting at 8:10 p.m.

#### **ATTORNEY BUSINESS:**

None.

#### **EXECUTIVE DIRECTOR BUSINESS:**

Someone in the audience asked how to get the map and Mrs. Rector said they should come into the office and they will make them one.

Considerable discussion ensued over how to get the copies and who would give them their sets with Mrs. Rector saying they should get a large aerial photo of the area so they can see the mine area and they can take it from there. She said when they get it done they should bring it back to the office so it can be scanned and copied.

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Mrs. Rector said she wants to report that Christy Powell has quit working for the office last Friday. She said she is sure they know what is going on with Susan because of the news coverage.

Discussion ensued over the staff shortage with Mrs. Rector saying right now it is Sheila, Joe and her in the office so the Minutes will get typed when they can and staff is doing their best. She said they should mark their calendars for the meetings so staff won't have to call and remind them for each meeting or they can send an email in response when they get their agendas.

Mrs. Rector said she is taking applications to fill the one position and she is going to hire a college student part time for the summer. She said they are trying their best and asked them to be patient.

Being no other business the meeting adjourned 8:20 p.m.

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Larry Willis, Chairman

ATTEST:

The undersigned Secretary of the Warrick County Board of Zoning Appeals does hereby certify the above and foregoing is a full and complete record of the Minutes of said Board at their monthly meeting held April 23, 2012.

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Sherri Rector, Executive Director